

HB 204 Senate Committee Testimony
For the Judiciary Committee

SENATE JUDICIARY

Exhibit No. 15
Date: 3/5/15
Bill No. HB204

Darwon R. Stoneman – West Glacier, MT Owner Glacier Raft Company/ Glacier Anglers/ Glacier Outdoor Center. I have been an owner in the Outfitting Industry since 1976 and have serviced over one half million clients in rafting and other outdoor activities in 3 different states across 2 countries. I have also provided expert witness testimony for insurance companies to assist in the defense of claims against outfitters in the rafting, fishing and heli-skiing industry since 1997. I'm currently a Board Member of the Flathead Chapter of Trout Unlimited and a past Board Member of America Outdoor

Purpose: To garner support for HB204 and help protect Montana outfitters, club sports and other businesses that use pre-activity waivers and release forms from frivolous lawsuits. Without these protections in place, attorneys can and do bring forth frivolous lawsuits. Having participated in a number of cases requiring expert witness work, I have seen first-hand the advantages other states have that have these protections in place.

History: I worked on the Montana Recreation Responsibility Act in 2009 and was surprised to learn that pre-activity waivers and release forms were not part of that legislation. Montana outfitters, as well as recreational and sports operations should expect the same judicial consideration that 47 out of the 50 states receive.

Facts:

1. Having worked in the defense of recreational service providers in Montana I have seen an apparent willingness to settle claims by insurance companies in situations based solely on the weak environment created by the uncertainty of whether courts would recognize the agreement entered into by the recreational participant and the and the provider. **This in turn makes the insurance companies inclined to raise the rates for the Recreational Provider in Montana or declined to be in the Montana market.**
2. We as Recreational Providers, that involve Inherent Risk, have a duty to warn our clients that the nature of the activities we provide are not in an environment that we can totally control. **Pre-activity waivers or release forms fulfil our duty to warn and should make the participants assume the risks of that activity. They have the option to not participate if they do not assume the Inherent Risk.**
3. Being an outfitter for almost 40 years I feel that I have can speak to some of the safe guards that outfitted recreational participants have. **Government agencies control our Special Use Permits or Licenses with the ability to revoke them for poor performance. In the present age of social media and TripAdvisor poor operators will not stay in business. Montana Recreational Providers do not have the same legal tools to protect themselves as other states.**
4. We as Recreational Providers are not looking to dissolve ourselves from gross negligence. Simple negligence is hard to define in the environment we operate in. An example may be in the whitewater rafting industry: One day a guide takes his raft through a rapid and ever one thinks it is a great time and just what they came for. The next day he runs the same rapid exactly the same except a wave surges slightly different and the raft flips causing someone to be injured. **This is an inherent risk of Whitewater Rafting and could not be construed as gross negligence and not even negligence. Under the present situation an aggressive plaintiff's attorney could create an easy legal action which ultimately an insurance company might deem cheaper to settle than go to court.**

PLEASE SUPPORT HB204!!!!